



[6705-01-P]

FARM CREDIT ADMINISTRATION

12 CFR Part 611

RIN 3052-AC85

Organization; Institution Stockholder Voting Procedures

AGENCY: Farm Credit Administration

ACTION: Proposed rule.

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SUMMARY: The Farm Credit Administration (FCA, we or our) proposes to amend its existing rules related to Farm Credit System (Farm Credit or System) bank and association stockholder voting policies and procedures so as to continue to address confidentiality and security in voting. This rulemaking would amend FCA's regulations to clarify and enhance voting procedures for tabulating votes, the use of tellers committees, and other items as identified.

DATES: Comments on this proposed rule must be submitted on or before [Insert date 60 days from date of publication in the Federal Register].

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (faxes) are difficult for us to process and achieve compliance with

section 508 of the Rehabilitation Act, we no longer accept comments submitted via fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- E-mail: Send us an e-mail at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).
- FCA Web site: <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."
- Federal eRulemaking Portal:  
<http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Barry F. Mardock, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of comments we receive at our office in McLean, Virginia, or on our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such

as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

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or

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SUPPLEMENTARY INFORMATION:

I. Objectives

The primary objective of this proposed rule is to clarify § 611.340 of our regulations regarding confidentiality and security in stockholder voting procedures and facilitate their safe and sound implementation by System institutions. Specifically, this proposed rule would clarify that:

- A System bank or association may use a tellers committee<sup>1</sup> to tabulate ballots and still maintain confidentiality and security of the voting process; and

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<sup>1</sup> Section 611.340(a)(4) requires that a tellers committee only consist of voting stockholders who are not directors, director-nominees, or members of that election cycle's nominating committee.

- A small number of administrative employees of a bank or association may assist a tellers committee in verifying a stockholder's eligibility to vote.

## II. Background

The Farm Credit Act of 1971, as amended (Act)<sup>2</sup>, authorizes the FCA to issue regulations implementing the Act's provisions<sup>3</sup>. Our regulations are intended to ensure the safe and sound operations of System institutions. In order to fulfill our responsibility to maintain the safety and soundness of System institutions, the FCA's regulations provide that banks and associations must ensure the confidentiality and security of stockholder voting, while maintaining cooperative principles<sup>4</sup>.

Section 611.340 of the FCA's regulations requires that the board of directors of each System bank and association adopt policies and procedures to ensure the confidentiality and security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials. Also, this section requires that System bank and association policies

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<sup>2</sup> Pub. L. 92-181, 85 Stat. 583 (1971), 12 U.S.C. 2001 et seq.

<sup>3</sup> Section 5.17(a)(9) of the Act authorizes the FCA to prescribe rules and regulations necessary or appropriate for carrying out {the} Act.

<sup>4</sup> Section 4.20 of the Act requires that "[i]n any election or merger vote, or other proceeding subject to a vote of the stockholders...the institution (1) may not use signed ballots; and (2) shall implement measures to safeguard the voting process for the protection of the right of stockholders...to a secret ballot."

and procedures ensure that ballots and proxy ballots are provided only to stockholders who are eligible to vote as of the record date set for the stockholder vote. Banks and associations must ensure the confidentiality of all information and materials regarding how or whether an individual stockholder has voted, including protecting the information from disclosure to anyone except vote tabulators and the FCA.

### III. Analysis

We request any interested person to submit comments on this proposed rule and ask that you support your comments with relevant data or examples. The FCA proposes the following changes to § 611.340:

#### A. Section 611.340(a)

In order to facilitate stockholders participation in their bank's or association's voting process and potentially reduce the cost of tabulating votes, the FCA seeks to clarify the language of § 611.340(a)(3) and § 611.340(a)(4) regarding the use of a tellers committee. Existing § 611.340(a)(3) requires that each System bank and association ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including protecting the information from disclosure to the institution's directors,

stockholders, or employees, or any other person. However, the information may be disclosed to an independent third party tabulating the vote or the FCA.

The use of a tellers committee, consisting of voting stockholders as provided for in § 611.340(a)(4), could be interpreted to be in conflict with the confidentiality provision in § 611.340(a)(3) that information and materials regarding how or whether an individual stockholder voted be protected from other bank or association stockholders. One means of reconciling the language in the related provisions would be to require that stockholder votes at System banks and associations be tabulated only by an independent third party.

Based on questions to the FCA regarding this regulation, we considered whether System banks and associations should be required to use only independent third party tabulators for System elections. That approach would accomplish the result of maintaining confidentiality and security in voting, but the cost of using an independent third party in all situations could be burdensome, particularly to small associations. We considered whether using a tellers committee to tabulate votes could be a confidential and secure method. A tellers committee could be significantly more cost effective and

could enhance participation of stockholders in the affairs of their institution, which is one of the guiding cooperative principles.

After considering the alternatives, the FCA proposes this rule amendment to clarify and affirm the ability of System banks and associations to utilize a tellers committee for tabulating votes. Accordingly, we propose adding the tellers committee as an additional exception in § 611.340(a)(3) to the vote tabulating process. If a tellers committee is added, the current requirements of § 611.340(a)(3) related to bank and association policies and procedures on confidentiality of the vote and protecting voting information from disclosure would apply equally to each member of the tellers committee as it does to an independent third party tabulator. Policies and procedures would need to ensure that information shared with a tellers committee remains confidential, similar to confidentiality clauses contained in an independent third party contract. If a tellers committee is used, the FCA proposes that only a small number of specifically authorized administrative employees of the bank or association be allowed to assist in the verification of stockholder eligibility to vote. Such employees could not be part of management or principally involved in the loan

making, pricing or servicing functions. Such employees would also be subject to the policies and procedures on confidentiality in the same manner as the independent third party and members of the tellers committee.

The FCA proposes the following revisions to  
§ 611.340(a):

1. Make existing paragraph (a)(4) paragraph (a)(3) and revise it to add "employees" in the list of stockholders prohibited from serving on a tellers committee. While in some instances, an institution employee may also be a stockholder, the FCA does not believe that it would be appropriate in any instance for an employee to serve on a tellers committee.

2. Add a new paragraph(a)(4) to:

- Require that a list of eligible voting stockholders as of the voting record date be provided to the vote tabulation group, either a tellers committee or an independent third party, to ensure the validity of votes cast; and
- Allow for a small number of specifically authorized administrative employees of the institution to assist the tellers committee solely in the verification of eligible ballots cast. In order to preserve confidentiality and security in voting when



using a tellers committee, the FCA would require that verifying eligibility of votes cast be conducted separately from tabulating the votes. Therefore, in the event of ballots received by mail, if stockholder eligibility is verified by the tellers committee members, such verification would be required to occur separate and apart from vote tabulation.

3. Re-designate existing paragraph (a)(3) as paragraph (a)(5) and add paragraph (a)(5)(i) to provide that the information could be disclosed to a duly appointed tellers committee and add paragraph (a)(5)(ii) to provide that the information could be disclosed to a small number of administrative staff supporting the tellers committee solely for the purpose of validating voter eligibility. Existing paragraphs (a)(3)(i) and (ii) would become (a)(5)(iii) and (iv), respectively.

B. Section 611.340(b)

Existing § 611.340(b) discusses balloting procedures, such as the use of an identity code "on the ballot." However, in common practice, when identity codes are used in the vote validation and tabulation process, the codes are not "on the ballot." The identity code is usually printed on a sealed envelope containing the ballot, thereby

identifying that a valid ballot has been cast, but not linking a specific ballot with an identifiable identity code. Accordingly, we propose to delete the terms "on the ballot" and "how or" from the second sentence of § 611.340(b).

To maintain consistency with the proposed changes to § 611.340(a) discussed above regarding the use of tellers committees, we propose to delete the phrase "has voted only if the votes are tabulated by an independent third party" from the second sentence of paragraph (b). The requirement for use of an independent third party tabulator for "weighted voting" would be retained.

In addition, we propose to move the last sentence of paragraph (b) to a new § 611.340(c) and include "or each member of the tellers committee" after "[a]n independent third party" as well as adding "and any administrative employees assisting the tellers committee in verifying eligibility to vote" to reflect the addition of a duly appointed tellers committee and small number of administrative staff as an exception at new § 611.340(a)(5)(i) and (ii).

The proposed new § 611.340(c) would emphasize that anyone involved in the tabulation of votes or verification of voter eligibility must acknowledge the importance of

maintaining secrecy by signing a written certification declaring that the individual will protect the confidentiality of the voting process.

C. Sections 611.340(c)-(e)

Existing §§ 611.340(c)-(e) would be redesignated as § 611.340(d)-(f), respectively, without change to content.

IV. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the FCA hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities. Each of the banks in the Farm Credit System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, Farm Credit System institutions are not "small entities" as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 611

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 611 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 611--ORGANIZATION

1. The authority citation for part 611 continues to read as follows:

Authority: Secs. 1.2, 1.3, 1.4, 1.5, 1.12, 1.13, 2.0, 2.1, 2.2, 2.10, 2.11, 2.12, 3.0, 3.1, 3.2, 3.3, 3.7, 3.8, 3.9, 3.21, 4.3A, 4.12, 4.12A, 4.15, 4.20, 4.21, 4.25, 4.26, 4.27, 4.28A, 5.9, 5.17, 5.25, 7.0-7.13, 8.5(e) of the Farm Credit Act (12 U.S.C. 2002, 2011, 2012, 2013, 2020, 2021, 2071, 2072, 2073, 2091, 2092, 2093, 2121, 2122, 2123, 2124, 2128, 2129, 2130, 2142, 2154a, 2183, 2184, 2203, 2208, 2209, 2211, 2212, 2213, 2214, 2243, 2252, 2261, 2279a-2279f-1, 2279aa-5(e)); secs. 411 and 412 of Pub. L. 100-233, 101 Stat. 1568, 1638; sec. 414 of Pub. L. 100-399, 102 Stat. 989, 1004.

2. Section 611.340 is revised to read as follows:

§ 611.340 Confidentiality and security in voting.

(a) Each Farm Credit bank and association's board of directors must adopt policies and procedures that:

(1) Ensure the security of all records and materials related to a stockholder vote including, but not limited to, ballots, proxy ballots, and other related materials.

(2) Ensure that ballots and proxy ballots are provided only to stockholders who are eligible to vote as of the record date set for the stockholder vote.

(3) Provide for the establishment of a tellers committee or an independent third party who will be responsible for validating ballots and proxies and tabulating voting results. A tellers committee may only consist of voting stockholders who are not employees, directors, director-nominees, or members of that election cycle's nominating committee.

(4) Ensure that a list of eligible voting stockholders (or identity codes of eligible voting stockholders) as of the voting record date is provided to the tellers committee or independent third party that will be tabulating the vote to ensure the validity of the votes cast. A small number of specifically authorized administrative employees of the institution may assist the tellers committee in such verifications, provided the institution implements procedures to ensure the confidentiality and security of the information made available to the employees. If an institution is using a tellers committee, verification of voter eligibility must be done separate and apart from the opening and tabulating of the actual ballots.

(5) Ensure that all information and materials regarding how or whether an individual stockholder has voted remain confidential, including protecting the

information from disclosure to the institution's directors, stockholders, or employees, or any other person except:

(i) A duly appointed tellers committee;

(ii) A small number of specifically authorized administrative employees assisting the tellers committee by validating stockholders' eligibility to vote;

(iii) An independent third party tabulating the vote;

or

(iv) The Farm Credit Administration.

(b) No Farm Credit bank or association may use signed ballots in stockholder votes. A bank or association may use balloting procedures, such as an identity code, that can be used to identify whether an individual stockholder is eligible to vote or has previously submitted a vote. In weighted voting, the votes must be tabulated by an independent third party.

(c) An independent third party or each member of the tellers committee that tabulates the votes, and any administrative employees assisting the tellers committee in verifying stockholder eligibility to vote, must sign a certificate declaring that such party, member, or employee will not disclose to any person (including the institution, its directors, stockholders, or employees) any information about how or whether an individual stockholder has voted,

except that the information must be disclosed to the Farm Credit Administration, if requested.

(d) Once a Farm Credit bank or association receives a ballot, the vote of that stockholder is final, except that a stockholder may withdraw a proxy ballot before balloting begins at a stockholders' meeting. A Farm Credit bank or association may give a stockholder voting by proxy an opportunity to give voting discretion to the proxy of the stockholder's choice, provided that the proxy is also a stockholder eligible to vote.

(e) Ballots and proxy ballots must be safeguarded before the time of distribution or mailing to voting stockholders and after the time of receipt by the bank or association until disposal. When stockholder meetings are held for the purpose of conducting elections or other votes, only proxy ballots may be accepted prior to any or all sessions of the stockholders' meeting and mail ballots may only be distributed after the conclusion of the meeting. In an election of directors, ballots, proxy ballots, and election records must be retained at least until the end of the term of office of the director. In other stockholder votes, ballots, proxy ballots, and records must be retained for at least 3 years after the vote.

(f) An institution and its officers, directors, and employees may not make any public announcement of the results of a stockholder vote before the tellers committee or independent third party has validated the results of the vote.

Date: October 10, 2014

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Dale L. Aultman,  
Secretary,  
Farm Credit Administration Board.

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